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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/006,569
Filing Date: December 10, 2001
Appellant(s): IWAI, KAZUO

Gerald M. Murphy, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01-17-2006 appealing from the Office action mailed 06-14-2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-22 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurschner et al. (US Patent 5,632,676) in view of Nishimoto et al. (US Patent 6,165,964) and Takahashi (US Patent 6,352,727).

Regarding claims 11, 12, 17, 18 and 25-27, Kurschner et al disclose a method of sterilizing poultry meat(Abstract) comprising the step of subjecting the poultry meat to a contact treatment with a solution during the poultry processing for the production of poultry meat; wherein the contact treatment is carried out at least in one step in the poultry processing comprising plural treatment steps (column 2, lines 19-25, Kurschner et al) as well as in one interval between consecutive two steps in the treatment steps (column 3, lines 26-32, Kurschner et al.); wherein the treatment step is selected from the group consisting of an evisceration step, a chilling step, and a wrapping step (column 1, lines 12-57, Kurschner et al); wherein the contact treatment occurs in the interval between the evisceration step and the chilling step (column 3, lines 26-32, Kurschner et al). Kurschner et al. do not teach the use of the contact treatment being a hinokitiol solution. However, Nishimoto et al teach the use of an aqueous antibacterial solution of hinokitiol for disinfection purpose (Abstract) for use in food factories (column

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9, lines 4-6). Further, Takahashi teaches that hinokitiol cannot only be used to treat meat processing equipment but can also be used to treat the meat itself (column 7, lines 30-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made by modifying the antibacterial solution of Kurschner et al by substituting the antibacterial solution hinokiitol as taught by Nishimoto et al. to sterilize poultry meat during processing. Furhter Takahashi teaches that the hinokitiol solution has a wide range of uses such as sterilizing utensils or sterilizing meat. As such this would only be the substituting of one well known sterilizing agent for another.

Re-Claims 13, 14, 19, 20 and 24, the combination of Kurschner et al as modified by Nishimoto et al and Takahashi discloses all the clamed features including wherein the concentration of hinokitiol in the solution is from 1-50000ppm (column 8, lines 54-60, Nishimoto et al.); and wherein the aqueous hinokitiol solution has a PH of 4 to 11 (column 11, lines 45-47, Nishimoto et al).

Re-Claims 15, 21 and 24, the combination of Kurschner et al as modified by Nishimoto et al. and Takahashi discloses all the claimed features including wherein the contact treatment is carried out at a temperature of 0 degrees to 70 degrees C (column 3, lines 26-32, Kurschner et al.)

Re-Claims 16 and 22, the combination of Kurschner et al as modified by Nishimoto et al. Takahashi and discloses all the claimed features including wherein the contact treatment is accomplished by a method consisting of applying a coat (column 3,

lines 42-48, Kurschner et al), or spraying (column 3, lines 26-27, Kurschner et al), or immersion (column 3, lines 28-29, Kurschner et al).

(10) Response to Argument

Applicant argues that there is no teaching to combine the teachings of Kurschner et al. and Nishimoto et al '964 sine the reference to Nishimoto et al. '964 device is directed to treat equipment used in a kitchen and does not disclose using the antimicrobial agent on food. Applicant also argues that the Examiner has failed to show any of the possible sources of motivation. However, the Examiner maintains that the combination is proper since both of the references deal with the same problem to be solved, that of sterilizing a product. Thus, while Nishimoto et al '964 does not specifically state that a hinokitiol solution could be used to sterilize meat products one would look to other areas where sterilization is required to find solutions which might work better or be less costly to use. As to the issue that scientific evidence has not been presented by the Examiner to support the position that sterilization methods to disinfect medical equipment or factories are equivalent to sterilization methods to disinfect food the Examiner is in full agreement. However, this is not what the Examiner has done in the rejections. The reference to Nishimoto et al '964 device was only relied on to teach the use of a specific sterilization solution not to use the same procedure for kitchen equipment on meat products. Further, while Applicant has submitted two declarations neither of these set forth scientific evidence as to why one would not consider using hinokitiol solution for sterilizing meat products. Also, the instruments

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cleaned by the hinokitiol solution would be used to cut edible food stuffs and as such the hinokitiol solution must be safe for human consumption since residue of the solution would inherently be left on the food stuffs.

Applicant argues that the addition of the Takahashi reference fails to supply what is missing in the combination of Kurschner et al and Nishimoto et al '964 in that Takahashi does not teach that hinokitiol solution can treat both meat and meat processing equipment. However, column 6, lines 20-29 of Takahashi teaches that there can be a mix of bactericides to treat foods, and column 7, lines 4-8 of Takahashi indicates hinokitiol as one of the bactericides. Finally, column 7, lines 30-55 of Takahashi suggests how bactericides are mixed to be used on meats. As such the Takahashi reference is the link to show that various bactericides can be used on both equipment and meat and that hinokitiol is a well-known bactericide included in this grouping.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Thomas Price


Primary Examiner GAU: 3643

Conferees:

SPE Peter M. Poon 

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